

07 JUN 2006

45



United States Patent and Trademark Office

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Alan R Loudermilk
LOUDERMILK & ASSOCIATES
Post Office Box 3607
Los Altos CA 94024-0607

In re Application of
Georges et al.
Application No.: 10/541,536
PCT No.: PCT/US03/25813
Int. Filing Date: 08 August 2003
Priority Date: 07 January 2003
Attorney Docket No.: DBT004PCTUS1
For: Systems And Methods For Creating, Modifying,
Interacting With And Playing Musical Compositions

DECISION

This is a decision on the correspondence filed on 07 February 2006, which is being treated under 37 CFR 1.497(d).

BACKGROUND

This international application was filed on 08 August 2003 and claimed a priority date of 07 January 2003. The United States was designated. Consequently, the thirty month period for payment of the basic national fee in the United States expired as of midnight on 07 July 2005. On 06 July 2005, applicants filed *inter alia* the basic national fee.

On 30 November 2005, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the submission of an oath or declaration of the inventors in compliance with 37 CFR 1.497(a) and (b) and a surcharge under 37 CFR 1.497(h).

DISCUSSION

The declaration of the inventors filed on 07 February 2005 lists four joint inventors, Eric Laurent, Frederic Flohr, Jean-Phillipe Chevreau and Alan R. Loudermilk, who were not nominated in the published international application, nor is an appropriate Form PCT/IB/306 present in the application file. Treatment of this situation under 37 CFR 1.497(d) is appropriate. A declaration filed under 37 CFR 1.497 (d) must be by the actual inventor or inventors as required under 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47. The declaration must be accompanied by (1) a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part, (2) the processing fee set forth in 37 CFR 1.17; and (3) if an assignment has been executed by any of the original named inventors, the written consent of the assignee (*See* 37 CFR 3.73(b)). *See* Section 201.03 of the Manual of Patent Examining Procedure (M.P.E.P.).

Regarding requirement (1), applicants have provided a "Statement of Inventors" stating in part that "Each person's signature below is an indication that the inventorship error occurred without deceptive intent on the part of that person." This "Statement of Inventors" has been signed by each of Eric Laurent, Frederic Flohr, Jean-Phillipe Chevreau and Alan R. Loudermilk.

Regarding requirement (2), the \$130.00 processing fee is being charged to Deposit Account No. 50-0251, per the authorization in the 06 July 2005 Transmittal Letter.

Regarding requirement (3), the published international application suggests that MADWAVES LTD. may enjoy an assignment interest in this application, but applicants have not provided documentary evidence of the assignee's consent. Applicant's attention is respectfully directed to 37 CFR 3.73(b), which provides that

(1) In order to request or take action in a patent or trademark matter, the assignee must establish its ownership of the patent or trademark property of paragraph (a) of this section to the satisfaction of the Director. The establishment of ownership by the assignee may be combined with the paper that requests or takes the action. Ownership is established by submitting to the Office a signed statement identifying the assignee, accompanied by either:

- (i) Documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment). The documents submitted to establish ownership may be required to be recorded pursuant to § 3.11 in the assignment records of the Office as a condition to permitting the assignee to take action in a matter pending before the Office; or
- (ii) A statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

(2) The submission establishing ownership must show that the person signing the submission is a person authorized to act on behalf of the assignee by:

- (i) Including a statement that the person signing the submission is authorized to act on behalf of the assignee; or
- (ii) Being signed by a person having apparent authority to sign on behalf of the assignee, e.g., an officer of the assignee.

In the absence of an appropriate consent of the assignee (or an explicit statement that no assignee enjoys an interest in this application), it would not be appropriate to consider requirement (3) to have been satisfied.

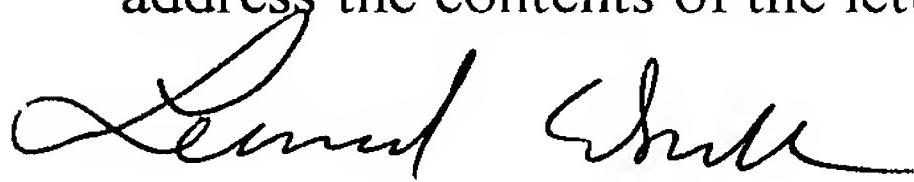
Inspection of the declaration filed on 07 February 2006 reveals that it appears to have been assembled by adding a faxed sheet signed by inventors Georges, Damevski, Blair and Laurent to a declaration document signed by all of the inventors other than Damevski. Since counsel has not provided copies of the complete declaration documents signed by each inventor, it is not clear that each inventor had the benefit of signing a complete copy of the declaration document. The declaration is also defective in that it names an inventor ("Voislav ('Voit') Damevski") whose name differs from a similar name appearing in the published international application: "Damevski, Voit." In that this is clearly more than a mere typographic error of phonetic misspelling of applicant's name, a proper petition (and fee) is required to resolve this discrepancy. See MPEP § 605.04(b) and MPEP § 201.03(b). In view of all of the circumstances currently of record, it would not be appropriate to grant the requested relief.

CONCLUSION

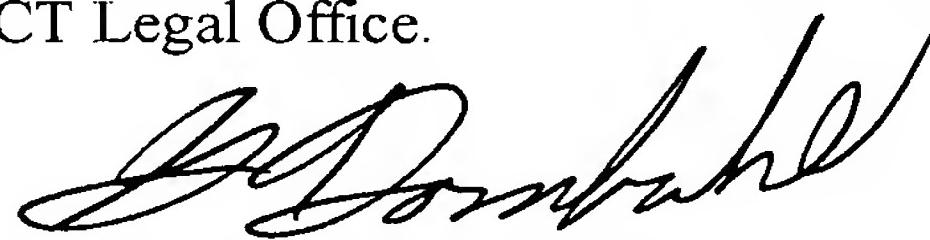
The declaration is **NOT ACCEPTED** under 37 CFR 1.497(d), without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **ONE (1) MONTH** from the mail date of this decision. Extensions of time are **NOT** available under 37 CFR 1.136(a). Failure to timely reply will result in **ABANDONMENT** of this application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.497(d)". No additional processing fee is required.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the PCT Legal Office.



Leonard Smith
PCT Legal Examiner
Office of PCT Legal Administration



George M. Dombroske
PCT Legal Examiner
Office of PCT Legal Administration
Tel: (571) 272-3283
Fax: (571) 273-0459